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MAR 28 2006

**OFFICE OF PETITIONS**

In re Application of :  
Gao, et al. :  
Application No. 10/015,715 : ON PETITION  
Filed: December 12, 2001 :  
Attorney Docket No. 39780-2830P1C56 :  
:

This is a decision on the correspondence entitled, "REQUEST FOR CORRECTED FILING RECEIPT," filed March 21, 2005, requesting that the Office correct the priority data for the above-identified application. The correspondence will be treated under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The petition should include a cover letter entitled "Petition under 37 CFR 1.78(a)(3)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

It is noted that the application was filed on December 12, 2001. A preliminary amendment changing the priority data was filed on August 29, 2002.

Applicant must file a petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 120 and § 365 for the benefit of priority to the prior-filed nonprovisional and PCT applications.

A petition under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. A claim of benefit under 35 U.S.C. 120 is required to be filed during the pendency of the nonprovisional application that seeks to claim the invention disclosed in an earlier-filed nonprovisional application.

However, when the nonprovisional application is filed on or after November 29, 2000, as is in the instant case, the claim of benefit must be filed **not merely** during the pendency of the

nonprovisional application, **but** within either 4 months of its filing date, or 16 months of the filing date of the prior filed application, whichever is later. In addition, the petition must be accompanied by:

- (1) the surcharge as set forth in 37 CFR 1.17(t);
- (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed as unintentional; and
- (3) the reference to the prior filed nonprovisional application, supplied in an application data sheet, or as an amendment in the first sentence following the title. *See* 35 U.S.C. 120 and 37 CFR 1.78(a)(2).

The August 29, 2002 preliminary amendment was outside of the window of 37 CFR 1.78(a)(2)(ii). Therefore, a petition under 37 CFR 1.78(a)(3) is required to add/alter priority information.

Further correspondence with respect to this matter should be addressed as follows:

**By mail:** Mail Stop PETITION  
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**By hand:** U.S. Patent and Trademark Office  
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Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

**By FAX:** (571) 273-8300 - ATTN: Office of Petitions

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3230.



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Office of the Deputy Commissioner  
for Patent Examination Policy